



RAVALLI COUNTY ATTORNEY

George H. Corn, County Attorney
T. Geoffrey Mahar, Chief Deputy
John Bell, Deputy
Karen Mahar, Deputy
William E. Fulbright, Deputy
Alex Beal, Deputy

Ravalli County Courthouse
205 Bedford Street, Suite C
Hamilton, MT 59840
Phone (406) 375-6222
Fax (406) 375-6328

MEMO

TO: Regina Plettenberg, Clerk & Recorder

CC: **Ravalli County Commissioners**
Karen Hughes, Planning
Morgan Farrel, Environmental Health

FROM: George Corn *GC*

DATE: March 19, 2007

RE: Proposed condominium declarations



Dear Regina:

You requested our advice regarding the proper procedure for review of proposed condominium declarations prior to recording. Specifically, you requested clarification regarding 1) what documents need to be included with a proposed declaration; 2) whether the declaration needs to be reviewed by Planning and/or Environmental Health prior to recording; and 3) when a preliminary declaration can be filed while further information is gathered.

As you correctly noted, §70-23-301, MCA sets forth the mandatory contents of a condominium declaration. §§70-23-304 and 70-23-304 set out additional requirements for department of revenue approval and floor plans, respectively. Please note that while § 70-23-306(2) allows the required statement of the registered architect or professional who reviews the floor plans to be filed at a later date as an amendment, the floor plans themselves must still be filed with the declaration under § 70-23-306(1).

Next, in regard to review by Planning, the exemption from subdivision review for certain condominiums is set forth in §76-3-203. This statute sets forth the requirements that must be

met for a proposed condominium to be exempted. Ravalli County Subdivision Regulation 4-4a echoes this exemption if the criteria of the statute are met. Subdivision Regulation 4-6 set out the procedures for review of subdivision exemptions in general; this procedure is intended to apply to exemptions under 4-4. Therefore, proposed condominiums must be reviewed by Planning as set forth to determine whether the statutory exemption applies. Review by Planning will also necessarily include review under existing zoning regulations, as §76-3-203 specifically requires conformance with local zoning regulations for the exemption to apply.

In regard to review by Environmental Health, §76-4-101 *et seq.* governs Sanitation in Subdivisions. For purposes of that chapter, a subdivision includes a condominium per §76-4-102(16). Sanitation review is required for all condominiums, including those that fall outside subdivision review, due to the concern regarding water supply, sewage disposal, and solid waste disposal logically arising from such high density development. There is no requirement that a parcel go through sanitation review more than once. Thus sanitation review is not required for certain condominiums that have already complied with the Subdivision Act or been previously reviewed for local health requirements per §76-4-111. In those cases, the owner should easily be able to obtain documentation of such prior approval from the appropriate department(s).

You also asked whether reviews by Planning and Environmental Health need to be conducted prior to filing of the final declaration, and our opinion is that they do. The filing of the final declaration submits the property to the Unit Ownership Act and makes the property susceptible to conveyance of individual units. §70-23-401. Lack of approval of a sewage system or any other necessary review can be fatal to condominium projects. If a developer is allowed to record a condominium declaration and sell units, but is then unable to proceed, the County may be exposed to liability. It is further necessary to scrutinize proposed declarations carefully, since in 1999 State oversight and enforcement of the Unit Ownership Act was repealed and no alternative enforcement provisions have been enacted. It may be misleading to publicly record a proposed project that cannot be legally completed. The better public policy is to require review before recording the final declaration, to protect potential purchaser and shield the county from liability.

Finally, there is no time limit set forth by statute for filing a preliminary declaration, other than §70-23-302 which provides that such a declaration may be recorded before construction of the building described in the declaration is completed. However, if you record a preliminary declaration, I recommend that you do so only after providing written notice to the owner that such filing does not vest any rights to the project and does not allow individual units to be conveyed until a final declaration is properly reviewed and recorded.

Regina, I understand that individuals seeking to record such declarations may be anxious to record as soon as possible. However, keep in mind that while you are required to record

Regina Plettenberg, Clerk & Recorder
March 19, 2007
Page 3

documents authorized by law, you are under no obligation to file erroneous documents and may refuse recording if you have legal justification to do so. In fact, you have a mandatory duty not to accept and record documents if they fail to comply with a provision of Montana law. You should continue to follow your established procedures that require review by the necessary departments as well as compliance with the relevant statute, and ensure that proposed declarations meet the requirements Montana law before they are recorded.